

according to two criteria is abnormal or normal (Claims 10-12), and methods for testing a subject's ability to maintain a position of equilibrium (Claims 13 and 14).

### **35 U. S. C. § 251**

Claims 10-14 were rejected under 35 U.S.C. § 251 as being based on new matter added to the patent for which reissue is sought. The applicant respectfully traverses this rejection.

The subject matter of Claims 10-14 is incorporated by reference in the present application by virtue of column 1, lines 4-13 of U.S. Patent No. 5,551,445 ("the '445 patent"), the original patent for which the present reissue is sought. The '445 patent is a divisional of Ser. No 749,045, filed Aug. 22, 1991, now issued as U.S. Patent No. 5,052,406, which is a continuation-in-part of Ser. No. 873,125, filed Jun. 11, 1986, now issued as U.S. Patent No. 4,738,269 ("the '269 patent"). More particularly, the subject matter of Claims 10-14 was disclosed in the '269 patent. The '269 patent is a continuation of Ser. No. 408,184, filed Aug. 16, 1982.

The applicant has enclosed a copy of both the '445 and '269 patents for the Examiner's convenience, and directs the Examiner's attention to column 7, lines 66-68 through column 8, lines 1-68; column 9, lines 1-29; and column 9, lines 67-68 through column 10, lines 1-23 of the '269 patent. The subject matter of Claims 10-14 is clearly disclosed in these sections. As a result of the aforementioned incorporation, the applicant asserts that Claims 10-14 are not based on new matter as defined by 35 U.S.C. § 251.

### **35 U.S.C. § 112**

Claims 10-14 were rejected under 35 U.S.C. § 112, first paragraph as "containing subject matter which was not described in the specification in such a way

to reasonably convey to one skilled in the art that the invention, at the time the application was filed, had possession of the claimed invention." The applicant respectfully traverses this rejection.

The applicant again directs the Examiner's attention to the '269 patent, the subject matter of which is incorporated in the present application by reference. As discussed above, the applicant believes that columns 7-10 of the '269 patent provide the required description of the subject matter of Claims 10-14. Consequently, the applicant submits that the subject matter of Claims 10-14 is described in "full, clear, concise and exact terms as to enable any person skilled in the art to which it pertains . . . to make and use" the invention. (35 U.S.C. § 112, ¶1).

### **35 U.S.C. § 102**

Claims 10-14 were rejected under 35 U.S.C. § 102(b) as being anticipated by Shumway-Cook et al., *Assessing the Influence of Sensory Interaction on Balance*, ("Shumway-Cook"). The applicant respectfully traverses this rejection.

The applicant respectfully asserts that the Shumway-Cook reference can not anticipate the present invention because the reference was not published until October 1986. The subject matter of Claims 10-14 of the present invention was disclosed to the United States Patent and Trademark Office in Ser. No. 873,125, filed Jun. 11, 1986 which in turn claimed priority from Ser. No. 408,184, filed Aug. 16, 1982. Consequently, the Shumway-Cook reference can not be considered as prior art under 35 U.S.C. § 102(b).

### **Conclusion**

The applicant believes that no fees or extensions of time under 37 C.F.R. 1.136(a) are required at this time. However, this conditional petition is being made